

By: Shapleigh

S.B. No. 411

A BILL TO BE ENTITLED

AN ACT

relating to dog attacks on persons; creating an offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Subchapter A, Chapter 822, Health and Safety Code, is amended to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS; DOGS THAT ATTACK PERSONS OR ARE A DANGER TO PERSONS

SECTION 2. Section 822.001, Health and Safety Code, is amended by adding Subdivision (3) to read as follows:

(3) "Dangerous dog," "dog," "owner," and "secure enclosure" have the meanings assigned by Section 822.041.

SECTION 3. Section 822.005, Health and Safety Code, is amended to read as follows:

Sec. 822.005. ATTACK BY DOG. (a) A person commits an offense if the person is:

(1) the owner of a dog and the dog makes an unprovoked attack on another person that occurs at a location other than the owner's property and that causes serious bodily injury or death to the other person; or

(2) the owner of a dog the owner knows to be a dangerous dog and the dangerous dog makes an unprovoked attack on another person that occurs at a location other than a secure enclosure in which the dog is restrained in accordance with Subchapter D and that causes serious bodily injury or death to the

1 other person.

2 (b) An offense under this section is a state jail felony
3 unless the attack causes death, in which event the offense is a
4 third degree felony.

5 (c) If a person is found guilty of an offense under this
6 section, the court may order the dog destroyed by a person listed in
7 Section 822.004.

8 (d) In addition to criminal prosecution, a person who
9 commits an offense under this section is liable for a civil penalty
10 not to exceed \$10,000. An attorney for the municipality or county
11 where the offense occurred may file suit in a court of competent
12 jurisdiction to collect the penalty. Penalties collected under
13 this subsection shall be retained by the municipality or county.

14 (e) A person who engages in conduct that constitutes an
15 offense under this section is liable to a claimant for actual
16 damages incurred by the claimant and arising from serious bodily
17 injury or death caused by the attack. A claimant may recover
18 damages under this subsection without regard to whether the owner
19 has been convicted of an offense under this section.

20 (f) For purposes of this section, a person knows the person
21 is the owner of a dangerous dog when the person learns the person is
22 the owner of a dangerous dog as described by Section 822.042(g).

23 ~~[PROVOCATION OR LOCATION OF ATTACK IRRELEVANT. Except as provided~~
24 ~~by Section 822.003(f), this subchapter applies to any dog that~~
25 ~~causes a person's death or serious bodily injury by attacking,~~
26 ~~biting, or mauling the person, regardless of whether the dog was~~
27 ~~provoked and regardless of where the incident resulting in the~~

1 ~~person's death or serious bodily injury occurred.]~~

2 SECTION 4. Subchapter A, Chapter 822, Health and Safety
3 Code, is amended by adding Sections 822.006 and 822.007 to read as
4 follows:

5 Sec. 822.006. DEFENSE; EXCEPTION. (a) It is a defense to
6 prosecution under Section 822.005(a) and a defense to a suit
7 brought under Section 822.005(d) or (e) that the person is a
8 veterinarian, a peace officer, a person employed by a recognized
9 animal shelter, or a person employed by this state or a political
10 subdivision of this state to deal with stray animals and has
11 temporary ownership, custody, or control of the dog in connection
12 with that position.

13 (b) It is a defense to prosecution under Section 822.005(a)
14 and a defense to a suit brought under Section 822.005(d) or (e) that
15 the person is an employee of the Texas Department of Criminal
16 Justice or a law enforcement agency and trains or uses dogs for law
17 enforcement or corrections purposes and is training or using the
18 dog in connection with the person's official capacity.

19 (c) It is a defense to prosecution under Section 822.005(a)
20 and a defense to a suit brought under Section 822.005(d) or (e) that
21 the person is a dog trainer or an employee of a guard dog company
22 under Chapter 1702, Occupations Code, and has temporary ownership,
23 custody, or control of the dog in connection with that position.

24 (d) It is a defense to prosecution under Section 822.005(a)
25 and a defense to a suit brought under Section 822.005(d) or (e) that
26 the person is disabled and uses the dog to provide assistance, the
27 dog is trained to provide assistance to a person with a disability,

1 and the person is using the dog to provide assistance in connection
2 with the person's disability.

3 (e) It is an exception to the application of Section
4 822.005(a) and a defense to a suit brought under Section 822.005(d)
5 or (e) that the person attacked by the dog was at the time of the
6 attack engaged in conduct prohibited by Section 30.02 or 30.05,
7 Penal Code.

8 Sec. 822.007. LOCAL REGULATION OF DOGS. This subchapter
9 does not prohibit a municipality or county from adopting leash or
10 registration requirements applicable to dogs.

11 SECTION 5. Section 822.044, Health and Safety Code, is
12 amended by amending Subsections (b) and (c) and adding Subsections
13 (e) and (f) to read as follows:

14 (b) An offense under this section is a Class C misdemeanor [~~7~~
15 ~~unless the attack causes serious bodily injury or death, in which~~
16 ~~event the offense is a Class A misdemeanor]~~.

17 (c) If a person is found guilty of an offense under this
18 section, the court may order the dangerous dog destroyed by a person
19 listed in Section 822.004 [~~822.003~~].

20 (e) A person who engages in conduct that constitutes an
21 offense under this section is liable to a claimant for actual
22 damages incurred by the claimant and arising from bodily injury
23 caused by the attack. A claimant may recover damages under this
24 subsection without regard to whether the owner has been convicted
25 of an offense under this section.

26 (f) If conduct constituting an offense under this section
27 also constitutes an offense under Section 822.005, the actor may be

1 prosecuted only under Section 822.005.

2 SECTION 6. (a) The change in law made by this Act applies
3 only to an offense committed on or after the effective date of this
4 Act. For purposes of this section, an offense is committed before
5 the effective date of this Act if any element of the offense occurs
6 before that date.

7 (b) An offense committed before the effective date of this
8 Act is covered by the law in effect when the offense was committed,
9 and the former law is continued in effect for that purpose.

10 SECTION 7. This Act takes effect September 1, 2007.